

## **Fact Sheet for Political Speech & Homeowner's Associations**

Every election season, the ACLU receives complaints from concerned citizens about ways in which their First Amendment free speech rights are curtailed by restrictions that regulate or prohibit the display of political signs in their yards or homes. Like most areas of the law, the facts mean everything and who is restricting speech is one of the most important questions.

Some citizens write us about restrictions promulgated and enforced by their homeowner's associations. This fact sheet is designed to highlight the differences between private contracting and state action. These differences may be important to consider when making decisions about buying or renting property.

### **What is a homeowner's association?**

- It is a private organization that holds title to any common property in a development while individual owners share access.
- The association assumes responsibility for maintenance of common areas and delivery of services. It enforces neighborhood aesthetic decisions in an effort to keep all property values high.

### **What governs the rules of a homeowner's association?**

- The homeowner's association is governed by a declaration. This is much like a constitution in that it is a foundational document that outlines how the association will be run and includes its regulations and bylaws.

### **Do residents have to abide by association rules and bylaws?**

- Yes. When residents purchase their property, they have essentially formed a private contract agreeing to abide by the regulations of the declaration. Absent fraud or duress, residents are obligated to abide by rules because they freely consented to do so.

### **What if the association restricts or prohibits political speech? Isn't that protected by the First Amendment?**

- The First Amendment is designed to protect citizens from the government, from state actors. When the government through their own laws (local, state, federal) abridges rights guaranteed by the Bill of Rights, there is a constitutional violation.
- However, private actors are allowed to freely contract. If within that contract there is a restriction on political speech, it is outside the protection of the Constitution as private parties agreed to it.
- Courts generally uphold restrictions on speech within a homeowner's association and are very reluctant to interfere with private contracts.